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COMMUNICATIONS.

THE EVOLUTION OF THE AMERICAN SYSTEM OF FORMING AND ADMITTING NEW STATES INTO THE UNION.

Our system of carving new states out of the public domain and incorporating them into the union is one of the contributions to political science which the American people have worked out for themselves. In the beginning of our independent existence Congress gave no consideration to the question of the formation or admission of new states west of the Alleghany Mountains, at least there is no recorded evidence of it. The Articles of Confederation ignored the possibility of their existence. Even Franklin, who previously had given considerable thought to western governments, considered in his draught of the Articles the possibility of admitting to the union certain then existing British colonies only.¹ The idea of forming new colonies in the west, subject to the British crown, was not a new one, and indeed attempts were soon made actually to establish new governments in that region;² but these attempts were unsuccessful, and through the Revolution the west remained *de facto* with the claimant states.

As the Revolutionary war progressed the idea gained ground that the western lands might be made to pay the war debt. In June, 1778, the Rhode Island delegates in Congress wished to have the Articles of Confederation amended so as to secure to Congress the crown lands, "reserving to the states within whose limits such crown lands may be the entire and complete jurisdiction thereof."³ New Jersey also objected to the Articles on this ground.⁴ Alexander Hamilton, in September, 1780, suggested that Congress be invested with the whole or a part of the western lands for revenue purposes, "reserving the jurisdiction to the states by whom they are granted."⁵ Other expressions of the same kind⁶ might be cited, but this is sufficient to show that, with the exception to be noted below, the small states

¹ Franklin's *Works* (Bigelow), v, 553.

² See Turner's *Western State-Making in the Revolutionary Era* in *American Historical Review*, i, Nos. 1 and 2; also, the writer's *New Governments West of the Alleghanies before 1780—Bulletin of the University of Wisconsin*. Economics, Political Science, and History series, ii, No. 1.

³ *Journals of Commerce*, iv, 370.

⁴ *Journals*, iv, 377.

⁵ Letter to James Duane, quoted by Adams, *Maryland's Influence*, p. 34.

⁶ See *American Archives*, fifth series, iii, 1020.

without claims to western lands themselves were distinctly admitting that states having such claims should retain at least the jurisdiction over them. We see also that so pronounced a nationalist as Alexander Hamilton held, at this time, that the old states should have individual jurisdiction over the west.

The most persistent declarations in favor of Congress using the back lands to defray the expenses of the war came from Maryland. Virginia claimed a vast extent of the western country for herself, and if she should retain it the Marylanders felt that it would be a serious menace in various ways to their prosperity.¹ In apprehension of the growing power of her already powerful neighbor, Maryland, through her delegates in Congress, moved October, 1777 that Congress have the right to fix the western boundary of states claiming "to the Mississippi or South Sea."² Maryland alone was in favor of this. Nevertheless the Virginia delegates were alarmed: the Articles of Confederation had not yet been sent to the states for ratification, and they secured the insertion of a clause providing that "no state shall be deprived of territory for the benefit of the United States."

It was just this western land question which caused the long delay in putting the Articles of Confederation into effect. The other states ratified them with little difficulty, but Maryland positively refused to do so till that question should be settled to her satisfaction. It was not till the demands of Maryland were backed by a growing public opinion and the request of Congress³ that the determined opposition of Virginia gave way, and she offered to the United States both soil and jurisdiction of the territory northwest of the Ohio river.⁴ It was more than three years afterwards that the cession was finally accepted,⁵ but Maryland was satisfied that she had gained her point. Her delegates were instructed to sign the Articles of Confederation,⁶ which were then put in force.

About the time of the large cession of Virginia came the smaller though important ones of New York,⁷ Massachusetts and Connecticut, and Congress was confronted with the necessity of adopting some system of organization and government for the western country. It was indeed decided that it should be cut into separate and independent states. That had been a part of Maryland's contention

¹ See Maryland's Subsequent Declaration, *Journals*, v, 210.

² *Journals*, iii, 435.

³ September 6, 1780, *Journals*, vi, 180.

⁴ By act of Assembly passed January 2, 1781, Hening's *Statutes*, x, 564.

⁵ *Journals*, ix, 67.

⁶ Act of Maryland Assembly, laid before Congress February 12, 1781, *Journals*, vii, 32.

⁷ *Journals*, vii, 45.

in the beginning,¹ when elsewhere the apparently universal cry was that the old states should retain at least the jurisdiction over the west. It seems to have been regarded as a rather secondary matter. Maryland desired that Virginia be deprived of both soil and jurisdiction; so, as a natural corollary, she proposed the formation of new states. When asking for cessions Congress² promised such formations, probably in order to quiet any fears some may have had that a more objectionable use would be made of the land. Moreover, Virginia had made it a condition of her cessions. That much then was settled. It remained for Congress to provide the system by which it should be brought about.

The first action taken by Congress having any reference to new states was in the resolve of October 10, 1780, already noted. Congress then guaranteed that land which any state might cede to the United States would "be settled and formed into separate republican states, which shall become members of the federal union, and have the same rights of sovereignty, freedom and independence as the other states; that each state which shall be so formed shall contain a suitable extent of territory, not less than 100 nor more than 150 miles square, or as near thereto as circumstances will admit."³ This would mean about twenty-five new states east of the Mississippi, providing each were 150 miles square. With 100 miles square to each state nearly sixty new states could have been expected east of the Mississippi, or over 300 in the present United States, exclusive of Alaska and insular possessions. Until the passage of the Ordinance of 1784 Congress took no further action regarding new states, although an attempt was made in May, 1782, to limit the size of new states to a maximum of 130 miles square.⁴

Meanwhile propositions and attempts at the formation of definite states were being made. As already indicated, the idea of new western governments was by no means new.

Probably the earliest expressions of the idea of forming trans-Alleghany governments by the united action of the old ones were in the plans for the union of the colonies, proposed in the Albany Convention in 1754.⁵ The President-General and Grand Council, representing the union, were to make new settlements in the west, and also to

¹ See Declaration of Maryland's First Constitutional Convention, *American Archives*, fifth series, iii, 178, cf. *Journals*, iii, 436, v, 210; also, Hening's *Statutes*, x, 549-556.

² *Journals*, vi, 213.

³ *Journals*, vi, 213.

⁴ *Journals*, vii, 362.

⁵ Plan for union of the Northern Colonies, *Collections of the Massachusetts Historical Society*, first series, vii, 203. Franklin's plan in his *Works* (Bigelow), ii, 355.

"make necessary rules and orders for the well regulating and managing such new settlements till the Crown shall see fit to form them into particular government or governments." Franklin, in his comments on this scheme, thought distinct governments might be formed when the new colonies "become sufficiently populous."¹ The plans as we have them say nothing about their admission into the union in due time, but probably that was expected. We find then in embryo the present system of organizing and conducting new territorial governments by a union as far back as the middle of the eighteenth century.

The Transylvanians, in 1775, elected a delegate to the Continental Congress. He went to Philadelphia with the petition from his constituents "that Transylvania may be added to the number of the United Colonies," and met with some encouragement. The settlers in western Pennsylvania tried to organize as a separate government, and get recognition by Congress as a separate state, but there is no evidence that Congress even considered their request.² The people of Franklin made greater progress in organizing their state government, but were also ignored by Congress.

These three inchoate states illustrate the fact that it was the accepted idea on the frontier at least that new governments should be formed in the west. They show the tendency of the early western settlers toward independent local government and the formation of new states for themselves. Perhaps the best illustration of this is in the case of Vermont, then practically a frontier state, successfully maintaining herself against the opposition of the claimant states. The pioneers of those days had not sufficient loyalty to the states claiming their allegiance to prevent their attempting to create new commonwealths in the territory of their mother states. Congressional action in this direction came too slowly for them. With the session of the lands and the formation of liberal state governments by Congress it could be expected that the new organizations would receive the unqualified support of the impatient settlers.

Probably the first plan looking to the formation of a definite state by congressional initiative was that of Silas Deane. It was in a letter to the secret committee of Congress in December, 1776, proposing that the western land be made to pay the expenses of the war and that a settlement be made at the mouth of the Ohio to enhance its value. He thought a tract of two hundred miles square, between the Ohio and Mississippi should be given to a company of Americans and Euro-

¹ Franklin's *Works* (Bigelow), ii, 369.

² For a full discussion of Transylvania and Westsylvania, see the writer's *New Governments West of the Alleghanies*, chaps. iv and v.

peans who should engage to establish a "civil government regulated and supported on the most free and liberal principles, taking therein the advice of the honorable Congress of the United States of America." After reaching the size of one thousand families the new state should be taxed for "the publick expenses of the Continent or United States," and should then "be entitled to a voice in Congress."¹ It can be seen at once that this scheme foreshadowed territorial government by Congress, and admission to the union upon the condition of a certain number of inhabitants. One thousand families in a new country would mean a total population of not over five thousand—a rather small number for statehood.

Thomas Paine's plan² came out in 1780. He proposed that a new state be formed in about the region of the proposed Vandalia colony, or modern West Virginia. In this connection he made some significant and interesting suggestions concerning the establishment of new state governments as follows :

"The setting off the boundary of any new state will naturally be the first step, and as it must be supposed not to be peopled at the time it is laid off, a constitution must be formed by the United States as the rule of government in any new state for a certain term of years (perhaps ten) or until the state becomes peopled to a certain number of inhabitants ; after which the whole and sole right of modelling their government to rest with themselves. A question may arise whether a new state should immediately possess an equal right with the present ones in all cases which may come before Congress. This experience will best determine ; but at first view of the matter it appears thus : that it ought to be immediately incorporated into the union on the ground of a family right, such a state standing in the line of a younger child of the same stock ; but as new emigrants will have something to learn when they first come to America, and a new state requiring aid rather than capable of giving it, it might be most convenient to admit its immediate representation into Congress, there to sit, hear, and debate on all questions and matters, but not to vote on any till after the expiration of seven years."

Is not this a clear indication of the later territorial government and the territorial delegate to Congress, showing the territory as a recognized part of the United States, admitted regularly into the Union in time ?

Three years later came what may be called the army plan,³ brought forward by General Rufus Putnam and other leading officers. They

¹ *American Archives*, fifth series, iii, 1021.

² *Paine's Public Good*, p. 31.

³ *Cutler's Life of Cutler*, i, 156-9, cf. *Pickering's Life of Pickering*, i, 457.

proposed that a new state be established in the region which is now Ohio, and the land given out to the officers and soldiers of the Revolutionary army, the United States government giving them also full farming equipments, transportation, and entire support for three years. It was expected that this would be a military state protecting the country against the northwestern Indians. Before setting out for their new homes the settlers, or "associators" as they were called, were to have a meeting to form a constitution for the new state, and at this meeting "delegates" were to "be chosen to represent them in the Congress of the United States, to take their seats as soon as the new state shall be erected." The thirteenth article of the plan provides "That the state so constituted shall be admitted into the confederacy of the United States and entitled to all the benefits of the union in common with the other members thereof."

How much progress was made with the army plan we do not know. It was intended to get the opinion of officers and soldiers concerning it and then apply to Congress for the grant.¹ It seems likely that it was merged into the officers' petition,² which was a somewhat different scheme. The latter was dated June 16, 1783, and signed by 285 officers of the Continental line. Most of them were northern men, the majority being from Massachusetts. They asked for nearly the same land that the army plan contemplated, saying that "this country is of sufficient extent, the land of such quality, and situation such as may induce Congress to assign and mark it out as a Tract or Territory suitable to form a distinct government (or colony of the United States) in time to be admitted one of the Confederated States of America." The tone of this petition is decidedly more modest than that of the army plan. Notice the dependent, even "colonial" relation proposed before admission to statehood.

These schemes were of course suggestive. While there was no more immediate outcome than the formation of the Ohio Land Company,³ still it was probably because of the attention the question of new states was receiving that Mr. Bland, about the same time, brought the question before Congress. His motion not only provided for the soldiers, giving each one thirty acres for each dollar of arrearages due, but also proposed that the western country be laid off into districts not larger than two degrees in latitude. Any district was to be admit-

¹ Pickering to Hodgdon, Pickering's *Life of Pickering*, i, 457.

² The petition in full is found in Bancroft's *History of the Constitution of the United States*, i, 314; in *Ohio Archaeological and Historical Quarterly*, i, 38, and Cutler's *Life of Culler*, i, 159, cf. I. W. Andrews in *Magazine of American History*, August, 1886, p. 136.

³ Report of House Committee, quoted in *Ohio Archaeological and Historical Quarterly*, i, 38.

ted into the union as a state, and on an equality with the original states, as soon as it reached a population of 20,000 male inhabitants. One-tenth of the land was to be reserved to the United States, the returns from which land to be appropriated to the payment of the United States civil list, erecting frontier forts and seminaries of learning, building and equipping a navy, "and to no other use or purpose whatever." If this scheme had been applied to the territory north of the Ohio river there would have been eight or ten states in that region. Requiring 20,000 resident males before admitting to statehood means a requirement of something less than a total population of 40,000, as the number of males is generally greater than that of the females in any new state. The Bland motion was referred to a committee, and seems to have gone no further.

The various propositions thus far seem to have been without definite outcome in the individual cases, but certainly they must have had some bearing on the system which was being gradually worked out, reacting perhaps on the public opinion whose trend they exhibit. Thus far the only congressional action concerning new states was in the resolve of October 10, 1780, promising that such states would be formed from ceded territory, of a size not over 150 nor less than 100 miles square, and admitted into the union with "the same rights of sovereignty, freedom and independence as the other states." Congress concluded that the time had come to take some definite steps toward fulfilling this promise and so it was decided, October 15, 1783, to appoint a committee to draw up a plan of organization and government.¹ It was evidently this committee that reported the scheme which became the ordinance of 1784.

As a landmark in the history of state making the ordinance of 1784 deserves consideration second only to the ordinance of 1787. The scheme adopted in it has been called Jefferson's plan because he was chairman of the committee, the other members being Howell, of Rhode Island, and Chase, of Maryland. A great part of the territory west of the Alleghanies still remained unceded to Congress, but it was taken for granted that the states would give up their claims, and the whole region as far as the Mississippi was cut up into proposed new states. The odd parallels of latitude formed their northern and southern boundaries, while a meridian passing through the "lowest point of the rapids of the Ohio" divided the west into two tiers of states. Another through the "western cape of the mouth of the Great Kenawha" cut off the tier of the old states. It was intended that the smaller states of the central tier should hold the balance between those lying on the seaboard and those along the Mississippi—

¹*Journals*, viii, 442.

at least that is the explanation given by Mr. Howell,¹ member of the committee. He explained, too, that while Virginia and North Carolina were cut off on their western sides by the Kenawha meridian, South Carolina and Georgia were to extend to that of the falls of the Ohio, "as their Atlantic coast falls off west." Jefferson's plan provided for fourteen new states. He gave rather strange names (*e.g.*, Cheronesus, Assenisipia) to ten of them, and it was thought that these ten would be organized first.²

Each of these districts was to hold its own convention, Congress appointing time and place, and adopt the constitution of some one of the old states, subject to alteration afterwards by the regular legislature. Between this time and the admission of the state a delegate might be kept in Congress with the right of debating, but not of voting. When any district attained a population of 20,000 free inhabitants a convention might be held, Congress appointing time and place as before, "to establish a permanent constitution and government,"³ but admission "by its delegates into the Congress of the United States on an equal footing with the original states" should not be granted any state till it "shall have of free inhabitants as many as shall then be in any one of the least numerous of the thirteen original states."⁴ There was some discussion in Congress on the question of what vote to require for admission of a state. The first report provided that the consent of nine states should be necessary, but it was amended to read, "Provided the consent of so many states in Congress is first obtained as may at the time be competent to such admission."

So Jefferson's plan as embodied in the ordinance of 1784 finally passed Congress,⁵ and was a law of the land for three years. The settlers in the trans-Alleghany regions of North Carolina were encouraged by it to organize the government of Franklin, conceiving that with the territorial cession of that state the time had come for some of the state making contemplated. But when North Carolina repealed her act of cession Congress could give no encouragement to the Franklin movement and it was soon crushed out by the mother state. The ordinance of 1784 was as short lived as the state which it seemed to

¹ David Howell to Jonathan Arnold, Staples' *Rhode Island in the Continental Congress*, 479.

² *Pennsylvania Packet*, September 30, 1785, cf. Barrett, *Evolution of the Ordinance of 1787*, p. 20, cf. McMaster's *History of the People of the United States*, i, 165, who speaks of seventeen states, with eight of them named.

³ Merriam (*Legislative History of the Ordinance of 1787*, p. 12) says that 20,000 was the requisite number for admission, as does also McMaster, *History of the People of the United States*, iii, 93.

⁴ About this time Delaware was thought to have a population of 37,000. Dexter's *Estimates of Population in the American Colonies*, p. 19.

⁵ The ordinance in full is found in *Journals* ix, 153.

call into existence, and in 1787 it was superseded by the far more famous ordinance of that year.

A desire for fewer new states seems to have been the main reason for setting aside the law of 1784. Soon after its passage Jefferson left Congress and Monroe became the leading figure in the movement to organize the west. He visited the western country and came to the conclusion that in the future there would be a diversity of interests between the east and west, making it desirable from the eastern point of view that the west should not get too much political power.¹ He thought, moreover, that much of the territory was so "miserably poor" that some of the districts would "perhaps never contain a sufficient number of inhabitants to entitle them to membership in the confederacy." He succeeded in getting the matter referred to a committee which made reports favoring the division of the territory northwest of the Ohio into not less than two nor more than five states. At one time William Grayson, of Virginia, moved a definite division of the territory into five states, but this was defeated by the opposition of the northern members. It was expected that the northwest would be settled from the south and have agricultural interests like the south.² It was considered that the political interests of the new country required many and small states; therefore the south, on the whole, supported that plan. Jefferson seemed much disappointed that his scheme of many small states had been set aside, and remonstrated vigorously in long letters from Paris to Monroe and Madison,³ fearing that this, together with the disposition to close the Mississippi, would produce "the severance of the eastern and western parts of our confederacy." However, three states, with a possibility of five, was the decision for the northwest, as made in the ordinance of 1787.

A committee appointed to report a form of temporary government, Monroe being chairman, proposed two stages of territorial government with chief officers appointed by Congress and a congressional delegate with half powers. This was adopted. The second stage was authorized in any district on acquiring "five thousand free male inhabitants of full age." The idea of the territorial delegate we have seen in most of the plans described above, beginning with that of Thomas Paine.

The question of the population requisite for admission to the union met with more discussion. The committee, under southern influence, proposed to retain that part of Jefferson's plan, i.e., to require a popu-

¹ Monroe to Jefferson, Bancroft's *History of the Formation of the Constitution*, I, 480.

² Notice Madison's opinion. *Elliot's Debates*, iii, 313.

³ Jefferson's *Writings* (Ford), iv, 333.

lation as large as the least numerous of the original thirteen states.¹ After some southerners on this committee had been replaced by northerners, a report was made raising the admission requirement to a population equal to one-thirteenth part of the citizens of the original states (to be computed from the last enumeration), besides the consent of Congress. But before considering the admission requirements laid down in the ordinance of 1787, let us review some of the propositions previously made on this point.

Silas Deane in December, 1776, suggested an admission requirement of something less than five thousand inhabitants.

Thomas Paine (1780) proposed admission in seven years after territorial organization, leaving open the question of numbers.

By the army plan (April, 1783) the new state was to come in at one jump under no condition of time or of numbers.

Mr. Bland's motion (June 5, 1783) proposed something less than a total population of forty thousand.

The officers' petition (June 16, 1783) was indefinite, merely proposing admission "in time."

Jefferson, at the head of a congressional committee, proposed (March, 1784) admission of a new state when its population became equal to that of the least numerous of the original ones, and with the consent of nine.

The ordinance of 1784 (adopted April 23) merely changed the nine states requirement to consent of so many "as may at the time be competent."

A committee under northern influence reported (September 19, 1786) that a population equal to one-thirteenth that of the original states be required, besides the consent of Congress.

And now we come to the final decision. The ordinance of 1787, referring to the new states proposed in the northwest, declares as follows:

"Whenever any of the said states shall have sixty thousand free inhabitants therein, such state shall be admitted by its delegates into the Congress of the United States on an equal footing with the original states in all respects whatever; and shall be at liberty to form a permanent constitution and state government: Provided the constitution so to be formed shall be republican and in conformity to the principles contained in these articles; and, so far as it can be consistent with the general interest of the confederacy, such admission shall be allowed at an earlier period and when there may be a less number of free inhabitants in any state than sixty thousand."²

¹ Winsor's *Narrative and Critical History*, vii, 537.

² The ordinance in full is in *Journals*, xii, 85.

It would be interesting to follow the development of this system of forming and admitting new states in some of its later details, but with the adoption of the ordinance of 1787 and its ratification by Congress under the Constitution the outlines of the system were definitely established. The enabling act, a somewhat uniform set of conditions for admission, and other interesting outgrowths could be easily traced, but the purpose of this paper has been sufficiently accomplished perhaps without it, by showing the rise and development of the idea of new state organization, and a relation between the new governments and that of the United States culminating in admission to the Union as provided by the ordinance of 1787.

GEORGE H. ALDEN.

Carleton College, Northfield, Minn.

THE COLUMBUS ATTEMPT TO SECURE THREE-CENT FARES.

The year has witnessed at least three notable evidences of a growing interest in the proper relation of the people to their street railways. One has been the widespread interest in the scandalous treatment of the question by the State of Pennsylvania and by its largest city. Another incident of note has been the able report of the Chicago Street Railway Commission, and a third has been the occurrences at Columbus, Ohio. Of the last, only, is it proposed here to write. For months the capital of the state was stirred to its depths by the agitation on the subject. The papers throughout the state often discussed it. The issues raised led to a political overturn in the city, and undoubtedly increased the majority cast for the present mayor of Cleveland at the same spring elections. As the situation contains lessons for the whole country and has never been fully presented outside of Ohio, a brief account may be here given.

The Columbus Railway Company came before the city council of that city in January, 1901, to secure an extension of its franchises for twenty-five years. The company possessed franchises on many streets, which were to expire at various periods during the next few years, and it claimed perpetual rights on other streets—and those the most important and profitable—although there was a serious doubt whether the latter franchises were valid. The company was not willing to concede its claims regarding the grants that were without time limit, but proposed, in the sought-for franchises, to secure rights on all the streets for twenty-five years, which would be binding even if the courts should declare that the so-called perpetual franchises are invalid. In return for all this, the company was at first willing to concede but little. Cash fares were to continue at five cents, but with larger privileges of transfer: the previous rates, six tickets for twenty-five